



STATE OF MISSOURI
OFFICE OF ADMINISTRATION
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)
INVITATION FOR BID (IFB)

IFB NO.: B1Z07093
TITLE: Meats (December)
ISSUE DATE: 9/26/06

REQ NO.: N/A
BUYER: Laurie Borchelt
PHONE NO.: (573) 751-1702
E-MAIL: laurie.borchelt@oa.mo.gov

RETURN BID NO LATER THAN: 10/16/06 AT 2:00 PM CENTRAL TIME

MAILING INSTRUCTIONS: Print or type **IFB Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Delivered sealed bids must be in DPMM office (301 W High Street, Room 630) by the return date and time.

(U.S. Mail)	or	(Courier Service)
RETURN BID TO: DPMM		DPMM
PO BOX 809		301 WEST HIGH STREET, ROOM 630
JEFFERSON CITY MO 65102-0809		JEFFERSON CITY MO 65101

CONTRACT PERIOD: December 1, 2006 through December 31, 2006

DELIVER SUPPLIES/SERVICES FOB (Free On Board) DESTINATION TO THE FOLLOWING ADDRESS:

MISSOURI DEPARTMENT OF CORRECTIONS
VARIOUS LOCATIONS

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Invitation for Bid (Revised 02/10/06). The bidder further agrees that the language of this IFB shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when a Notice of Award is signed and issued by an authorized official of the State of Missouri, a binding contract shall exist between the bidder and the State of Missouri.

SIGNATURE REQUIRED

DOING BUSINESS AS (DBA) NAME		LEGAL NAME OF ENTITY/INDIVIDUAL FILED WITH IRS FOR THIS TAX ID NO.	
MAILING ADDRESS		IRS FORM 1099 MAILING ADDRESS	
CITY, STATE, ZIP CODE		CITY, STATE, ZIP CODE	
CONTACT PERSON		EMAIL ADDRESS	
PHONE NUMBER		FAX NUMBER	
TAXPAYER ID NUMBER (TIN)	TAXPAYER ID (TIN) TYPE (CHECK ONE) ___ FEIN ___ SSN		VENDOR NUMBER (IF KNOWN)
VENDOR TAX FILING TYPE WITH IRS (CHECK ONE) (NOTE: LLC IS NOT A VALID TAX FILING TYPE.) ___ Corporation ___ Individual ___ State/Local Government ___ Partnership ___ Sole Proprietor ___ Other _____			
AUTHORIZED SIGNATURE		DATE	
PRINTED NAME		TITLE	

1. INTRODUCTION

1.1 Purpose:

- 1.1.1 This document constitutes an invitation for sealed bids from prospective bidders for the purchase of meat, butter, oleo and eggs for the month of December for the Department of Corrections' various facilities throughout the State of Missouri in accordance with the requirements and provisions stated herein.

1.2 Public Record Search and Retrieval System:

- 1.2.1 The previous procurement documentation B1Z07077 may be viewed and printed from the Division of Purchasing & Materials Management's **Public Record Search and Retrieval System** located on the Internet at www.oa.mo.gov/purch/purch.htm. Any questions regarding this IFB must be directed to the buyer listed on the cover page of this IFB.

1.3 Contact:

- 1.3.1 Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc. related to the bid document must be referred to the buyer identified on the first page of this document. Such communication should be received at least ten calendar days prior to the official bid opening date.

2. CONTRACTUAL REQUIREMENTS

2.1 Contract:

- 2.1.1 The purchase order issued by the Division of Purchasing and Materials Management represents the contract. A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the bidder's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) the Division of Purchasing and Materials Management's indication of acceptance of the bid, i.e., the formal purchase order. All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.

- Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.
- The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
- Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal modification to the purchase order issued and authorized by the Division of Purchasing and Materials Management. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence from the state agency, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

2.2 Contract Period:

- 2.2.1 The original contract period shall be December 1, 2006 through December 31, 2006. The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period.

2.3 Price:

- 2.3.1 All prices shall be as indicated on the pricing pages. The state shall not pay nor be liable for any other additional costs including but not limited to taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc.

2.4 Coordination:

- 2.4.1 The contractor shall fully coordinate all contract activities with those activities of the state agency. As the work of the contractor progresses, advice and information on matters covered by the contract shall be made available by the contractor to the state agency or the Division of Purchasing and Materials Management throughout the effective period of the contract.

2.5 Delivery Performance:

- 2.5.1 The contractor and/or the contractor's subcontractor(s) shall deliver products in accordance with the contracted delivery times stated herein to the state agency upon receipt of an authorized order. Delivery shall include unloading shipments at the state agency's dock or other designated unloading site as requested by the state agency. All orders must be shipped F.O.B. Destination, Freight Prepaid and Allowed. All orders received on the last day of the contract, must be shipped at the contract price. All deliveries must be coordinated with the state agency.

2.6 Insurance:

- 2.6.1 The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract.

2.7 Subcontractors:

- 2.7.1 Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and the State of Missouri and to ensure that the State of Missouri is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State of Missouri and the contractor. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein. The contractor must obtain the approval of the State of Missouri prior to establishing any new subcontracting arrangements and before changing any subcontractors. The approval shall not be arbitrarily withheld.

2.8 Replacement of Damaged Product:

- 2.8.1 The contractor shall be responsible for replacing any item received in damaged condition at no cost to the State of Missouri. This includes all shipping costs for returning damaged items to the contractor for replacement.

2.9 Substitutions:

- 2.9.1 The contractor shall not substitute any item(s) that has been awarded to the contractor without the prior written approval of the Division of Purchasing and Materials Management.

2.10 Payments:

- 2.10.1 The contractor shall understand and agree the state reserves the right to make contract payments to the contractor through electronic funds transfer (EFT). Therefore, prior to any payments becoming due under the contract, the contractor must return a completed state Vendor ACH/EFT Application which is downloadable from the following website: <http://www.oa.mo.gov/purch/vendorinfo/vendorach.pdf>. Each contractor invoice must contain a unique invoice number. The invoice number will be listed on the state's EFT addendum record to enable the contractor to properly apply state payments to invoices. The contractor must comply with all other invoicing requirements stated in the IFB.

2.11 Termination:

- 2.11.1 The Division of Purchasing and Materials Management reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse. The contractor shall be entitled to receive just and equitable compensation for services and/or supplies delivered to and accepted by the State of Missouri pursuant to the contract prior to the effective date of termination.

2.12 Federal Funds Requirement:

- 2.12.1 The contractor shall understand and agree that this procurement may involve the expenditure of federal funds. Therefore, in accordance with the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, Public Law 101-166, Section 511, "Steven's Amendment", the contractor shall not issue any statements, press releases, and other documents describing projects or programs funded in whole or in part with Federal money unless the prior approval of the state agency is obtained and unless they clearly state the following as provided by the state agency:
- the percentage of the total costs of the program or project which will be financed with Federal money;
 - the dollar amount of Federal funds for the project or program; and
 - percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

3. GENERAL REQUIREMENTS**3.1 All meat provided hereunder must be USDA inspected.**

- 3.1.1 The contractor shall not deliver any product that has been rejected by other purchasing entities (i.e. National School Lunch Program).
- 3.1.2 Unless otherwise specified all beef and pork items shall be handled, packaged and packed according to the Institutional Meats Purchase Specifications (IMPS) General Requirements. Unless indicated otherwise, all beef and pork items must be frozen.
- 3.1.3 "Freezer storage" - when the state agency does not specify a maximum length of freezer storage prior to delivery, beef, lamb, veal, poultry, and pork must remain in the frozen state no longer than 150 days from the date the product was packed.
- 3.1.4 Ground, diced, portion cut product and sausage items must remain in the frozen state no longer than 90 days from the date the product was packed.
- 3.1.5 "Expiration dates" or "sell by" dates of packaged "meat and meat products" shall be adhered to and shall not be certified by USDA Agricultural Marketing Services (AMS) if the date is expired.

- 3.1.6 The State of Missouri reserves the right to purchase such item(s) rejected elsewhere if deemed necessary. Any additional costs incurred by the State of Missouri in replacing the above mentioned rejected item(s) shall be the responsibility of the contractor.

3.2 Certification:

- 3.2.1 Meat products must be certified to comply with USDA meat certification branch specifications as applicable.
- 3.2.2 All products offered for delivery must meet or exceed the requirements for the USDA, IMPS Missouri Department of Agriculture and Health regulations, Federal Food, Drug and Cosmetic Act, Federal Wholesale Meat Act, USDA Grade Standards, and Federal Specifications and Commercial Item Description as specified. All products awarded hereunder and delivered to the state shall be subject to inspection for compliance to the applicable specification.

3.3 Testing:

- 3.3.1 Item 40085 shall be tested for metal contamination in accordance with IMPS General Requirements.

3.4 Changes and/or Cancellations:

- 3.4.1 Due to fluctuating needs, the State of Missouri reserves the right to change the required quantity of the items specified herein or to cancel such item(s) in its entirety if necessary. In the event of such a change and/or cancellation of an item(s) the contractor will be notified.

4. SPECIFICATION LIMITS:

4.1 The following limits are hereby established for the State of Missouri:

- 4.1.1 Aerobic plate count – shall not to exceed 1,500,000/g.
- 4.1.2 Coliforms – shall not to exceed 500 mpn/g.
- 4.1.3 Fecal coliforms – shall not to exceed 100 mpn/g.
- 4.1.4 Fat content – shall not to exceed 2% variance.

4.2 The State of Missouri Standard Specifications:

- 4.2.1 The contractor understands and agrees that the item numbers and abbreviated item descriptions contained in the pricing pages of this IFB correspond to the State of Missouri standard specifications for meat and meat products issued July 1, 1992.
- 4.2.2 All poultry products shall contain no other type of meat except that which is specifically stated in the specification.

4.3 Governing Terms:

- 4.3.1 The contractor is advised that, in the case of a discrepancy between the Invitation for Bid (IFB) and the referenced specifications for meat and meat products, the IFB shall govern.

4.4 Fat Limitations:

- 4.4.1 For all wholesale and fabricated beef products, except those for which definite fat limitations are indicated in the detailed specifications, the maximum average surface fat thickness limitations shall be 1/2 inch average thickness, with 3/4 inch maximum at any point except seam fat.

5. DELIVERY/DELIVERY CODES:

5.1 The contractor shall adhere to the following delivery requirements:

- 5.1.1 The contractor and/or the contractor's subcontractor(s) shall deliver products in accordance with the contracted delivery times stated herein to the state agency upon receipt of an authorized order. Delivery shall include unloading shipments at the state agency's dock or other designated unloading site as requested by the state agency. All deliveries must be coordinated with the state agency.
- 5.1.2 The contractor must make delivery of awarded items as requested by the state. Any change in the specified delivery schedule shall be subject to approval by the facility to which delivery is required.
- 5.1.3 The contractor shall not attempt to make delivery to any facility on official state holidays.
- 5.1.4 The following are definitions for the delivery codes contained in the pricing pages. Failure by the contractor to deliver according to the specified requirements may result in suspension from future bidders' list.

0	Institution will notify	6	5 weekly deliveries
1	All 1st week	7	1 st & 3 rd week
2	All 2nd week	8	2 nd & 4 th week
3	All 3rd week	9	Call for Appointment
4	All 4th week		
5	4 weekly deliveries		

- 5.1.5 The contractor must call the institution to make an appointment for delivery.

5.2 Pallet Requirement:

- 5.2.1 All products must be palletized. Pallets will be exchanged upon delivery.

6. FACILITY LOCATIONS:

- 6.1 The following are the facility locations and corresponding facility numbers. Also provided below is the required delivery schedule and delivery time(s) for each facility which may be subject to change due to security reasons:**

009	Boonville Correctional Center Boonville, MO 65233 (660) 882-6521 Delivery Schedule: mtwthf Delivery Time: 8:00 am - 3:00 pm
010	Algoa Correctional Center Jefferson City, MO 65102 (573) 751-3911 Delivery Schedule: mtwthf Delivery Time: 8:00 am - 11:00 am, 1:00 - 3:00 pm
011	Chillicothe Correctional Center Chillicothe, MO 64601 (660) 646-4032 Delivery Schedule: mtwthf Delivery Time: 8:00 am - 11:00 am, 1:00 - 3:30 pm

- 012 Tipton Treatment Center
Tipton, MO 65081
(660) 433-2031
Delivery Schedule: mtwthf
Delivery Time: 8:00 am - 3:30 pm
- 036 Moberly Correctional Center
Moberly, MO 65270
(660) 263-3778
Delivery Schedule: mtwthf
Delivery Time: 8:00 am - 2:00 pm
- 140 Jefferson City Correctional Center
Jefferson City, MO 65101
(573) 751-3224
Delivery Schedule: mtwthf
Delivery Time: 7:00 am – 1:30 pm
- 143 Ozark Correctional Center
Fordland, MO 65652
(417) 767-4491
Delivery Schedule: Tuesday, Wednesday & Thursday
Delivery Time: 7:00 am - 12:00 pm
- 144 St. Louis Community Release Center
St. Louis, MO 63102
(314) 877-0300
Delivery Schedule: mtwthf
Delivery Time: 8:00 am – 11:00 am, 12:00 pm - 3:30 pm
- 145 Kansas City Community Release Center
Kansas City, MO 64101
(816) 842-7467
Delivery Schedule: mtwthf
Delivery Time: 7:00 am - 11:00 am, 12:00 pm - 3:00 pm
- 146 Missouri Eastern Correctional Center
Pacific, MO 63069
(636) 257-3322
Delivery Schedule: mtwthf
Delivery Time: 8:00 am - 11:00 am, 12:00 pm – 3:00 pm
- 147 Farmington Correctional Center
Farmington, MO 63640
(573) 756-8001
Delivery Schedule: mtwthf
Delivery Time: 8:00 am - 11:00 am, 12:00 pm - 3:00 pm
- 148 Fulton Reception & Diagnostic Center
Fulton, MO 65251
(573) 592-4040
Delivery Schedule: mtwthf
Delivery Time: 8:00 am - 11:30 am, 12:30 - 2:30 pm
- 149 Potosi Correctional Center
Mineral Point, MO 63660
(573) 438-6000
Delivery Schedule: mtwthf

Delivery Time: 8:00 am - 10:30 am, 12:00 pm - 3:30 pm

- 150 Western Missouri Correctional Center
Cameron, MO 64429
(816) 632-1390
Delivery Schedule: mtwthf
Delivery Time: 8:00 am - 3:00 pm

- 151 Western Recep. Diag. Correctional Center
St. Joseph, MO 64506
(816) 387-2158
Delivery Schedule: mtwthf
Delivery Time: 7:30 am – 10:30 am, 11:30 am - 2:00 pm

- 153 Maryville Treatment Center
Maryville, MO 64468
(660) 582-6542
Delivery Schedule: mtwthf
Delivery Time: 8:00 am - 3:00 pm

- 154 Crossroads Correctional Center
Cameron, MO 64429
(816) 632-2727
Delivery Schedule: mtwthf
Delivery Time: 8:00 am - 3:00 pm

- 155 Northeast Correctional Center
Bowling Green, MO 63334
(573)324-9975
Delivery Schedule: mtwthf
Delivery Time: 7:30 am – 11:00 am, 12:00 p.m. - 2:30 pm

- 156 Women's Eastern Reception Diagnostic & Correctional Center
Vandalia, MO 63382
(573)594-6686
Delivery Schedule: mtwthf
Delivery Time: 7:30 am – 11:30 am, 12:30 – 3:00 pm

- 157 South Central Correctional Center
Licking, MO 65342
(573)674-4470
Delivery Schedule: mtwthf
Delivery Time: 8:00 am – 3:00 pm

- 158 South East Correctional Center
Charleston, MO 63834
(573) 683-4409
Delivery Schedule: mtwthf
Delivery Time: 8:00 am – 3:00 pm

- 159 Eastern Reception Diagnostic & Correctional Center
Bonne Terre, MO 63628
(573) 358-4412
Delivery Schedule: mtwthf
Delivery Time: 7:30 am – 11:00 am, 11:30 am – 3:00 pm

- 160 Commodity Warehouse - Eastern Region
Bonne Terre, MO 63628
(573)358-4412
Delivery Schedule: mtwthf
Delivery Time: 7:30 a.m. – 11:00 a.m., 11:30 a.m. – 3:00 p.m.
- 162 Commodity Warehouse - Central Region
8416 No More Victims Road
Jefferson City, MO 65101
Delivery Schedule: mtwthf
Delivery Time: 8:00 a.m. – 2:00 p.m.

7. BIDDER'S INSTRUCTIONS

7.1 Business Compliance:

- 7.1.1 The bidder must be in compliance with the laws regarding conducting business in the State of Missouri. The bidder certifies by signing the signature page of this original document and any amendment signature page(s) that he/she and any proposed subcontractors are presently in compliance with such laws. The bidder shall provide documentation of compliance upon request by the Division of Purchasing and Materials Management. The compliance to conduct business in the state shall include but may not be limited to:

- Registration of business name (if applicable)
- Certificate of authority to transact business/certificate of good standing (if applicable)
- Taxes (e.g., city/county/state/federal)
- State and local certifications (e.g., professions/occupations/activities)
- Licenses and permits (e.g., city/county license, sales permits)
- Insurance (e.g., worker's compensation/unemployment compensation)

7.2 Pricing:

- 7.2.1 The bidder must provide firm, fixed pricing for the items proposed on the pricing pages.

7.3 Bid Alternates:

- 7.3.1 The bidder must identify any alternative bid(s) in the space provided on the pricing pages.

7.4 Bid Detail Requirements and Deviations:

- 7.4.1 It is the bidder's responsibility to submit a bid that meets all mandatory specifications stated herein. The bidder should clearly identify any and all deviations from both the mandatory and desirable specifications stated in the IFB on the pricing pages. Any deviation from a mandatory requirement may render the bid non-responsive. Any deviation from a desirable specification may be reviewed by the state as to its acceptability and impact on competition.

7.5 Attachments:

- 7.5.1 The bidder is advised that attachments exist to this document which include information critical to the requirements of this IFB. However, they are not able to be incorporated into this document but, instead, must be downloaded from the State of Missouri website. Please refer to <https://www.moolb.mo.gov>. It shall be the sole responsibility of the bidder to obtain the attachments. The bidder shall not be relieved of any responsibility for performance under the contract due to the failure of the bidder to obtain copies of the attachments.

7.6 Unit of Measure:

- 7.6.1 If the unit of measure specified on the attached pricing pages is different than the manner in which the bidder offers that item, then the unit of measure being proposed by the bidder must be clearly identified on the pricing page.
- 7.6.2 In the cost evaluation, a unit price conversion will be done to fairly evaluate bid prices. However, for any resulting contract, the unit of measure bid will be the unit of measure awarded. Bidders are encouraged to contact the Buyer **prior to** submission of their bid to discuss anticipated unit modifications. The bidder is cautioned that the State of Missouri reserves the right to clarify the unit of measure modification or to disqualify the bid for that line item if the unit of measure modification is not deemed appropriate or in the best interests of the State of Missouri.

7.7 All or None:

- 7.7.1 The bidder must price each institution within an item description for the following items: 40085, 40310, 40340, 40410, and 40970. The institutions identified for any item listed previously will be awarded all or none for that item.

7.8 Samples:

- 7.8.1 The bidder may be required to submit samples. If notified, such samples should be received in the Division of Purchasing and Materials Management within five (5) working days after notification. Samples will be evaluated for consistency of product, flavor, texture, yield, and color as solely determined by the State of Missouri. If sample testing indicates that the product does not meet mandatory specifications or is otherwise found unacceptable by the State of Missouri, the award shall not be made to that bidder. Failure to submit samples upon request may be cause for disqualification for that line item, or for the bid in its entirety.
- 7.8.2 The bidder must submit a sample that conforms to the mandatory IFB specifications for the specific line item. If awarded a contract for the line item, the bidder hereby agrees that the product provided under contract shall be the same product submitted for sample testing.

7.9 American Made:

- 7.9.1 In accordance with the Domestic Product Procurement Act (hereinafter referred to as the Buy American Act) RSMo 34.350-34.359, the bidder is advised that any goods purchased or leased by any public agency shall be manufactured or produced in the United States.
- 7.9.2 The requirements of the Buy American Act shall not apply if other exceptions to the Buy American mandate in RSMo 34.353 are met.
- 7.9.3 If the bidder claims there is only one line of the good manufactured or produced in the United States, RSMo 34.353 (2), or that one of the exceptions of RSMo 34.353 (3) applies, the Executive Head of the Agency bears the burden of certification as required prior to the award of a contract.
- 7.9.4 In accordance with the Buy American Act, the bidder must provide proof of compliance with RSMo 34.353. Therefore the bidder should complete and return Exhibit A, certification regarding proof of compliance, with the bid. This document must be satisfactorily completed prior to an award of a contract.
- 7.9.5 If any products and/or services offered under this IFB are being manufactured or performed at sites outside the continental United States, the bidder **MUST** disclose such fact and provide details with the bid.

7.10 Debarment Certification:

- 7.10.1 Bidders should complete and return the attached certification regarding debarment, etc., Exhibit B with their bid. This document must be satisfactorily completed prior to award of the contract.

7.11 Determination for Award:

- 7.11.1 The award of purchase order shall be made to the lowest priced responsive bidder. The State of Missouri reserves the right to reject any bid which is determined unacceptable for reasons which may include but are not necessarily limited to: 1) failure of the bidder to meet mandatory general performance specifications; and/or 2) failure of the bidder to meet mandatory technical specifications; and/or, 3) receipt of any information, from any source, regarding delivery of unsatisfactory product or service by the bidder within the past three years. As deemed in its best interests, the State of Missouri reserves the right to clarify any and all portions of any bidder's offer.

7.12 Employee Bidding/Conflict of Interest:

- 7.12.1 Bidders who are employees of the State of Missouri, a member of the General Assembly or a statewide elected official must comply with Sections 105.450 to 105.458 RSMo regarding conflict of interest. If the bidder or any owner of the bidder's organization is currently an employee of the State of Missouri, a member of the General Assembly or a statewide elected official, please provide the following information.

Name and title of state employee, General

Assembly member or statewide elected official: _____

Name of state agency where employed: _____

Percentage of ownership interest in bidder's

organization held by state employee, General

Assembly member or statewide elected official: _____%

EXHIBIT A**STATE OF MISSOURI -- OFFICE OF ADMINISTRATION
DOMESTIC PRODUCTS PROCUREMENT ACT (BUY AMERICAN)**

The Missouri Domestic Products Procurement Act (34.350-34.359 RSMo) requires that for all bids with a value of \$25,000 or more, the goods or commodities purchased by any public agency or used or supplied in the construction, alteration, repair, or maintenance of any public works must be **manufactured or produced** in the United States. As defined in 34.350 RSMo, United States means the United States of America, the District of Columbia, and all territories and possessions subject to the jurisdiction of the United States. The law also requires that the bidder must provide proof of compliance. **Note: In general, if an import tariff is applied to an item, it does not qualify for the Buy American preference. In addition, Most Favored Nation status does not allow application of the preference.**

Section A – All Products Are Manufactured or Produced In U.S.

If all products bid qualify as domestic products under Missouri law, complete only Section A.

I hereby certify that all products qualify as domestic, that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.
SIGNATURE (If submitting bid electronically, typed signature required).
COMPANY NAME

If Section A is completed, do not complete Section B.

Section B – Only One Product Line or No Products Are Manufactured or Produced In U.S.

If only one product line or no products are manufactured or produced in the U.S. complete only section B.

I hereby certify that there is only one product line or no product manufactured or produced in the U.S., that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.
SIGNATURE (If submitting bid electronically, typed signature required).
COMPANY NAME

Section C – Products May Qualify Because of Qualifying Treaty

If some or all products bid qualify for domestic status because of a trade treaty, etc., then the bidder must identify each product, country and qualifying treaty, etc. below. The bidder must list ALL products which are or may qualify as domestic below. If more space is needed, please copy this form and submit as an attachment.

BID ITEM NUMBER(S)	COUNTRY WHERE MANUFACTURED OR PRODUCED	QUALIFYING TREATY, LAW, AGREEMENT, OR REGULATION

SECTION C

I hereby certify that the specific items listed above are domestic, that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.

SIGNATURE (If submitting bid electronically, typed signature required)

COMPANY NAME

NOTE: Any product not listed above in Section C will be considered non-domestic if Section A is not signed. If this form is not completed, signed, and returned, items bid may not receive the domestic preference.

EXHIBIT B

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98 Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988, Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS FOR CERTIFICATION)

- (1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

**STATE OF MISSOURI
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT
TERMS AND CONDITIONS -- INVITATION FOR BID**

1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in an Invitation for Bid (IFB) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Division of Purchasing and Materials Management (DPMM)**. The agency is also responsible for payment.
- b. **Amendment** means a written, official modification to an IFB or to a contract.
- c. **Attachment** applies to all forms which are included with an IFB to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Bid Opening Date and Time** and similar expressions mean the exact deadline required by the IFB for the receipt of sealed bids.
- e. **Bidder** means the person or organization that responds to an IFB by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the IFB document.
- f. **Buyer** means the procurement staff member of the DPMM. The **Contact Person** as referenced herein is usually the Buyer.
- g. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. **Contractor** means a person or organization who is a successful bidder as a result of an IFB and who enters into a contract.
- i. **Exhibit** applies to forms which are included with an IFB for the bidder to complete and submit with the sealed bid prior to the specified opening date and time.
- j. **Invitation for Bid (IFB)** means the solicitation document issued by the DPMM to potential bidders for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- m. **Pricing Page(s)** applies to the form(s) on which the bidder must state the price(s) applicable for the equipment, supplies, and/or services required in the IFB. The pricing pages must be completed and submitted by the bidder with the sealed bid prior to the specified bid opening date and time.
- n. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of DPMM.
- o. **Shall** has the same meaning as the word **must**.
- p. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

2. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the DPMM.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the IFB or resulting contract shall be in the Circuit Court of Cole County, Missouri.

3. OPEN COMPETITION/INVITATION FOR BID DOCUMENT

- a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise the DPMM if any language, specifications or requirements of an IFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the IFB to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from the DPMM, unless the IFB specifically refers the bidder to another contact. Such communication should be received at least ten calendar days prior to the official bid opening date.
- b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the IFB, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the IFB, any questions received less than ten calendar days prior to the IFB opening date may not be answered.
- c. Bidders are cautioned that the only official position of the State of Missouri is that which is issued by the DPMM in the IFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The DPMM monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. The IFB is available for viewing and downloading on the state's On-Line Bidding/Vendor Registration System website. Premium registered bidders are electronically notified of the bid opportunity based on the information maintained in the State of Missouri's vendor database. If a Premium registered bidder's e-mail address is incorrect, the bidder must update the e-mail address themselves on the state's On-Line Bidding/Vendor Registration System website.
- f. The DPMM reserves the right to officially amend or cancel an IFB after issuance. Premium registered bidders who received e-mail notification of the bid opportunity when the IFB was established and Premium registered bidders who have responded to the IFB on-line prior to an amendment being issued will receive e-mail notification of the amendment(s). Premium registered bidders who received e-mail notification of the bid opportunity when the IFB was established and Premium registered bidders who have responded to the bid on-line prior to a cancellation being issued will receive e-mail notification of a cancellation issued prior to the exact closing time and date specified in the IFB.

4. PREPARATION OF BIDS

- a. Bidders **must** examine the entire IFB carefully. Failure to do so shall be at bidder's risk.
- b. Unless otherwise specifically stated in the IFB, all specifications and requirements constitute minimum requirements. All bids must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the IFB, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the bid. In addition, the bidder shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Bids which do not comply with the requirements and specifications are subject to rejection without clarification.
- d. Bids lacking any indication of intent to bid an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the IFB.
- e. In the event that the bidder is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an IFB, such a bidder may submit a bid which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between the DPMM and the bidder, if such bidder is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the IFB. Any such bidder needs to include in the bid, a complete list of statutory references and citations for each provision of the IFB which is affected by this paragraph.
- f. All equipment and supplies offered in a bid must be new, of current production, and available for marketing by the manufacturer unless the IFB clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the IFB.
- h. Prices bid shall remain valid for 90 days from bid opening unless otherwise indicated. If the bid is accepted, prices shall be firm for the specified contract period.
- i. Any foreign bidder not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their bid in order to be considered for award.

5. SUBMISSION OF BIDS

- a. Premium registered bidders may submit bids electronically as permitted by the IFB through the State of Missouri's On-Line Bidding/Vendor Registration System website or hard copy delivered to the DPMM office. Standard registered bidders or bidders that have not registered on the On-Line Bidding/Vendor Registration System website may submit bids hard copy delivered to the DPMM office. Delivered bids must be sealed in an envelope or container, and received in the DPMM office located at 301 West High St, Rm 630 in Jefferson City, MO no later than the exact opening time and date specified in the IFB. All bids must (1) be submitted by a duly authorized representative of the bidder's organization, (2) contain all information required by the IFB, and (3) be priced as required. Hard copy bids may be mailed to the DPMM post office box address. However, it shall be the responsibility of the bidder to ensure their bid is in the DPMM office (address listed above) no later than the exact opening time and date specified in the IFB.
- b. The sealed envelope or container containing a bid should be clearly marked on the outside with (1) the official IFB number and (2) the official opening date and time. Different bids should not be placed in the same envelope, although copies of the same bid may be placed in the same envelope.
- c. A bid submitted electronically by a Premium registered bidder may be modified by signed, written notice which has been received by the DPMM prior to the official opening date and time specified. A bid may also be modified in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to modify a bid shall not be honored.
- d. A bid submitted electronically by a Premium registered bidder may be canceled on-line prior to the official opening date and time. A bid which has been delivered to the DPMM office, may only be withdrawn by a signed, written notice or facsimile which has been received by the DPMM prior to the official opening date and time specified. A bid may also be withdrawn in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone, e-mail, or telegraphic requests to withdraw a bid shall not be honored.
- e. When submitting a bid electronically, the Premium registered bidder indicates acceptance of all IFB terms and conditions by clicking on the "Submit" button on the Electronic Bid Response Entry form. Bidders delivering a hard copy bid to DPMM must sign and return the IFB cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the bidder of all IFB terms and conditions. Failure to do so may result in rejection of the bid unless the bidder's full compliance with those documents is indicated elsewhere within the bidder's response.

6. BID OPENING

- a. Bid openings are public on the opening date and at the opening time specified on the IFB document. Names, locations, and prices of respondents shall be read at the bid opening. Premium registered bidders may view the names and prices of the respondents on the state's On-Line Bidding/Vendor Registration System website after the official opening date and time. The DPMM will not provide prices or other bid information via the telephone.
- b. Bids which are not received in the DPMM office prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late bids may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.

7. PREFERENCES

- a. In the evaluation of bids, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 05-30, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.

8. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the bidder and request clarification of the intended bid. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by a bidder shall be subject to evaluation if deemed by the DPMM to be in the best interest of the State of Missouri.

- c. The bidder is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the IFB, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the bidder whose bid (1) complies with all mandatory specifications and requirements of the IFB and (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the IFB and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- e. In the event all bidders fail to meet the same mandatory requirement in an IFB, DPMM reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the DPMM reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. The DPMM reserves the right to reject any and all bids. When all bids are non-responsive or otherwise unacceptable and circumstances do not permit a rebid, DPMM may negotiate for the required supplies.
- g. When evaluating a bid, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from bidder's references, or from any other source.
- h. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- i. Any award of a contract shall be made by notification from the DPMM to the successful bidder. The DPMM reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by DPMM based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- j. All bids and associated documentation which were submitted on or before the official opening date and time will be considered open records pursuant to Section 610.021 RSMo following the official opening of bids.
- k. The DPMM posts all bid results on the On-line Bidding/Vendor Registration System website for Premium registered bidders to view for a reasonable period after bid award. The DPMM maintains images of all bid file material for review. Bidders who include an e-mail address with their bid will be notified of the award results via e-mail.
- l. The DPMM reserves the right to request clarification of any portion of the bidder's response in order to verify the intent of the bidder. The bidder is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- m. Any bid award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- n. The final determination of contract award(s) shall be made by DPMM.

9. CONTRACT/PURCHASE ORDER

- a. By submitting a bid, the bidder agrees to furnish any and all equipment, supplies and/or services specified in the IFB, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) DPMM's acceptance of the response (bid) by "notice of award" or by "purchase order." All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.
- c. A notice of award issued by the State of Missouri does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services for the State of Missouri, the contractor must receive a properly authorized purchase order unless the purchase is equal to or less than \$3,000. State purchases equal to or less than \$3,000 may be processed with a purchase order or other form of authorization given to the contractor at the discretion of the state agency.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the DPMM or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

10. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. For each purchase order received, an invoice must be submitted that references the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the DPMM.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the IFB.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in Section 34.055 RSMo.
- g. The State of Missouri reserves the right to purchase goods and services using the state purchasing card.

11. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

12. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

13. WARRANTY

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the DPMM, (2) be fit and sufficient for the purpose expressed in the IFB, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

14. CONFLICT OF INTEREST

- a. Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

15. REMEDIES AND RIGHTS

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

16. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, the DPMM may cancel the contract. At its sole discretion, the DPMM may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide DPMM within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the DPMM will issue a notice of cancellation terminating the contract immediately.
- c. If the DPMM cancels the contract for breach, the DPMM reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the DPMM deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

17. COMMUNICATIONS AND NOTICES

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.

18. BANKRUPTCY OR INSOLVENCY

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the DPMM immediately.
- b. Upon learning of any such actions, the DPMM reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

19. INVENTIONS, PATENTS AND COPYRIGHTS

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

20. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the DPMM shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the DPMM until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

21. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

22. FILING AND PAYMENT OF TAXES

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.

23. TITLES

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

Revised 02/10/06